

In Re Brewster
Del. Supr., 587 A.2d 1067 (1991)

Disciplinary Rules: DLRPC 8.4(b), 8.4(c)

Nature of Case:

Following Respondent's three-count indictment and guilty plea to one count of bank fraud, the Board on Professional Responsibility held a hearing as to charges against Respondent of professional misconduct. On July 12, 1990, the Supreme Court placed Respondent on interim suspension pending final determination of the matters before the Board and further order of the Court. The Board's final report found that Respondent had violated DLRPC 8.4(b) and 8.4(c). Respondent, who was incarcerated, appeared pro se and indicated to the Court that he took no exception to the Board's findings. Respondent argued, however, that the appropriate sanction should not be disbarment as the Disciplinary Counsel maintained but instead it should be a suspension of one or two years retroactive to the date of his interim suspension.

According to Respondent, a number of factors distinguished his case from one requiring disbarment:

- (1) His conviction did not result from any action he took as a lawyer, and the transaction from which it resulted did not take place in Delaware.
- (2) He has been a member in good standing of the Delaware Bar for nearly twenty years, and believes he was a credit to the Bar in public service as a Deputy Attorney General and Securities Commissioner, and in private endeavors as a lawyer and businessman.
- (3) He sincerely and deeply regrets that his actions would reflect discredit in any way on the Delaware Bar.
- (4) When his deception (alteration of a stock certificate held by a Florida bank as collateral for a loan) was discovered by the bank, he voluntarily entered into a modification agreement, fully collateralized the loan with other assets, and began to liquidate assets to pay off the loan.
- (5) There is precedent for imposing substantial suspension, rather than disbarment.

Action Taken by the Court:

The Court concluded that the record clearly supported the findings of fact and conclusions of law made by the Board. The Court noted that it had the inherent and exclusive authority for disciplining lawyers, and that in imposing sanctions, the Court is guided by its prior precedents. The Court explained that it had previously cited to the American Bar Association standards for imposing lawyer discipline, particularly that which stated that the Court could consider the following factors:

- (a) the duty violated;
- (b) the lawyer's mental state;
- (c) the actual or potential injury caused by the lawyer's misconduct; and
- (d) the existence of aggravating or mitigating factors.

ABA Standards for Imposing Lawyer Sanctions, Standard 3.0 at p. 25 (February 1986).

The Court explained that although protection of the public is a primary purpose of disciplinary action, there are other important purposes to be served by lawyer discipline, including the preservation of the integrity of the profession, and the deterrence of other lawyers from similar misconduct. Consequently, the Court will impose discipline for criminal conduct not arising directly from the practice of law. See ABA Standards for Imposing Lawyer Sanctions, Standard 5.11, commentary, at p. 36. The Court concluded that Respondent failed to maintain his personal integrity by engaging in serious criminal conduct resulting in his felony conviction for bank fraud.

Disbarment was ordered.